



Sunkist Growers, Inc.

Restated Articles of Incorporation and Bylaws

*As Amended through ~~October~~August 19,
201620*

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AMENDED ARTICLES OF INCORPORATION

OF

SUNKIST GROWERS, INC.*

First: The name of this corporation (hereinafter referred to as “Sunkist”) is:

SUNKIST GROWERS, INC.

Second: The primary purposes for which Sunkist is formed are (1) to furnish facilities and agencies through which citrus and other fruits of its members and other producers may be marketed or processed and marketed, and to return to said members or other producers the proceeds of sales, less necessary operating and marketing expenses, on the basis of the quantity or value of citrus fruits marketed for such member or other producer; and (2) to engage in any business directly or indirectly related to that described in clause (1) of this Article Second from time to time authorized or approved by the board of directors of Sunkist.

In carrying out its purposes, Sunkist shall have every power, privilege, right and immunity now or hereafter authorized or permitted by law to a corporation organized or existing pursuant to the provisions of Chapter 1 of Division 20 of the Food and Agricultural Code of the State of California and amendments thereto and substitutions therefor and continuances thereof. Nothing herein contained shall be deemed to limit the right or power of Sunkist to do any lawful act that the board of directors shall determine.

Third: Sunkist is organized and exists as a nonprofit cooperative marketing association, without capital stock, pursuant to the provisions of Chapter 1 of Division 20 of the Food and Agricultural Code of the State of California.

Fourth: The principal office for the transaction of business of Sunkist is located in the County of Los Angeles, State of California.

Fifth: The number of directors shall be thirty-two (32); provided, that bylaws may be adopted whereby a different number of directors may be fixed, in which event the number of directors shall be as provided in said bylaws.

Sixth: As stated in the original Articles, the names and addresses of the Persons who were to serve as the first directors were:

<u>Name</u>	<u>Residence</u>
F. Q. Story	Alhambra, California
W. E. Sprott	Porterville, California
A. P. Harwood	Upland, California

* Composite of documents on file with the California Secretary of State.

H. E. Cheseboro	Covina, California
W. R. Powell	Glendora, California
P. J. Dreher	Pomona, California
S. J. Beals	Orange, California
W. G. Fraser	Riverside, California
A. P. Johnson	Riverside, California
Frank Scoville	Corona, California
E. F. Van Luven	Colton, California
W. H. Young	Duarte, California
D. Felsenthal	Los Angeles, California

Seventh: To provide funds for corporate purposes of Sunkist, revolving funds, capital credits, and other allocated reserves may be established. Such revolving fund, capital or allocated reserve credits shall not be deemed to evidence, create or establish any present property rights or interest, as such terms are herein used, but such credits shall be deemed to evidence an indebtedness of Sunkist payable only as provided in the bylaws. In the event the membership of any member shall terminate for any reason whatsoever, such member shall not thereupon become entitled to demand or receive any interest in the property and assets of Sunkist as herein defined, but shall be entitled only to receive payment of its revolving fund or capital credits and its interest, if any, in other allocated reserves as and when same would have been paid had it remained a member.

Eighth: Sunkist is a membership corporation, without shares of stock. It shall have four classes of members, as more particularly defined in the bylaws: (1) Growers; (2) Local Associations, which shall be nonprofit cooperative associations of Growers; (3) District Exchanges, which shall be nonprofit cooperative associations composed of Growers and Local Associations; and (4) all others ("Class A Members") who are admitted as members of Sunkist and are producers of fruit. In order to be eligible for membership in Sunkist, Local Associations and District Exchanges shall provide voting and property rights consistent with this Article Seventh.

The voting power and property rights and interests of each said class of members of Sunkist shall be as follows:

1. **Voting Power** – The voting power of members of Sunkist shall be unequal. All residual voting power shall ultimately be exercised by Growers, through the representative channels of their respective Local Associations and District Exchanges. Growers shall have the sole voting power in, and control of, their Local Associations, including the power to elect the boards of directors thereof. The Local Associations and direct Grower members shall elect the board of directors of their respective District Exchanges. The District Exchanges shall elect the directors of Sunkist. In the election of

directors, each District Exchange shall be entitled to as many votes as are obtained by multiplying the number of directors that it is entitled to nominate, as prescribed by the bylaws of Sunkist, by the number of directors to be elected. Each District Exchange shall be entitled to nominate no less than one (1) director. Additional directors may be nominated by District Exchanges, on the basis of the average volume of all fruit marketed through Sunkist as shown by its records during any combination of three (3) of the four (4) preceding fiscal years, which will result in each District Exchange being able to nominate the greatest number of directors in accordance with the following formula; provided, however, that the divisor used to compute the District Exchange percentages shall be the total of the three-year average volumes used for all the District Exchanges such that the sum of the percentages that each District Exchange three-year volume bears to the total of all such three-year volumes shall not exceed one hundred percent (100%):

Each District Exchange shall be entitled to nominate one (1) additional director for each whole four percent (4%) increment of such volume which such District Exchange has in excess of two percent (2%) of such volume.

Commencing in 1976, each District Exchange having less than two percent (2%) of such volume, as reflected in any two of the three most recent compilations of such volume approved or accepted by the board of directors, shall, for the purpose of nominating directors as specified above, combine its volume with one or more other District Exchanges in such manner as shall allow such combination of District Exchanges to nominate not less than one (1) director in accordance with the above formula as though they were a single District Exchange, and such combination of District Exchanges may so nominate a director or directors as though they were a single District Exchange.

Other than in the election of directors of Sunkist, the voting rights of the Growers shall be exercised by and through their respective Local Associations or their representative or representatives on the board of directors of their District Exchange, on the basis of one (1) vote for each one thousand (1,000) cartons or equivalent (or major fraction thereof) of citrus fruit, fresh and products, marketed through Sunkist during the average of the three (3) preceding complete fiscal years of Sunkist. Class A Members shall have voting powers only with respect to their respective patronage pools as set forth in the bylaws of Sunkist as amended from time to time.

2. Property Rights – The property rights and interests of the members of Sunkist shall be unequal.

The District Exchanges and Local Associations, as such, shall have no property rights or interests. The property rights and interests of Growers in Sunkist at any time shall be such part of the entire property rights and interests as the amount of citrus fruit, fresh and products, marketed by each member Grower through the Sunkist System, during the six (6) preceding completed years bears to the total of such citrus fruit shipped by all member Growers through the Sunkist System during the same six (6) years. Class A Members shall have no property rights in any assets of Sunkist, except the right to participate in their respective patronage pools on a patronage basis.

In the event of dissolution or liquidation, any residue that may remain after payment in full of all indebtedness, including that evidenced by revolving fund or capital credits and other allocated reserves, shall be distributed among those member Growers (other than any member Grower who has been expelled) who were members at the time of commencement of proceedings for liquidation or dissolution, in proportion to the property rights held by each such Grower at the time of commencement of proceedings for liquidation or dissolution.

In the event Sunkist shall at any time determine to transfer the property and assets of Sunkist to a successor association and shall designate such association as the successor association of Sunkist, then the transfer of said property and assets by Sunkist to such successor association shall not be considered a dissolution or liquidation within the meaning of the foregoing paragraph. Such association may be formed or exist under state or federal laws, provided only it shall be in substance a farmers' nonprofit cooperative marketing association. Such successor association may be an association formed or recognized for such purpose, or it may be formed by merger, consolidation, or any corporate reorganization. Property rights and interests of the members of Sunkist shall be recognized and preserved in an equitable manner in such successor association.

Ninth: Sunkist shall have perpetual existence.

Tenth: Sunkist is authorized to indemnify the directors and officers of Sunkist to the fullest extent permissible under California law.

Eleventh: The liability of the Directors of Sunkist for monetary damages shall be eliminated to the fullest extent permissible under California law.

AMENDED BYLAWS
SUNKIST GROWERS, INC.

ARTICLE I

GENERAL

1.1 **Articles of Incorporation** – The articles of incorporation (as amended and/or restated from time to time, the “Articles”) of Sunkist Growers, Inc. (“Sunkist” or the or this “Corporation”) are hereby made a part of these bylaws (these or the “Bylaws”) and all matters hereinafter contained in these Bylaws shall be subject to such provisions in regard thereto, if any, as are set forth in the Articles. The name and purposes of the Corporation shall be as set forth in the Articles.

Definitions – As used in these Bylaws, the following terms have the following meanings:

- 1.2 (a) “Affiliate” or “Affiliates” means any Person that directly, or indirectly through one or more Persons, controls, is controlled by, or is under common control with, the Person specified. For purposes of this definition, “control” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- (b) “Board” means the body of directors duly elected under Article 5 hereof.
- (c) “CGCL” means the California General Corporation Law, as amended from time to time.
- (d) “Cal. Ag. Code” means the Food and Agricultural Code of California, as amended from time to time.
- (e) “carton” means the quantity of the particular fruit involved which is contained in the standard carton in common use for fresh shipments of such fruit, or the equivalent thereof, as determined from time to time by the Board. The Board may from time to time establish the relationship or ratio between the carton and other units of weight or quantity.
- (f) “fresh fruit” means fruit destined only for fresh consumption and moving in normal fresh fruit channels. The Board may from time to time specify other and more detailed definitions not inconsistent herewith.
- (g) “fruit” means both fresh and products fruit of all varieties.
- (h) “market” or “marketing” means the sale or shipment for purposes of sale as fresh fruit or as products fruit, utilization for products, or other disposition.
- (i) “Person” means and includes an individual natural person, a corporation, a partnership, an association, a fiduciary, a trust, a limited liability company or any other entity or organization.
- (j) “variety” means any one of the following: Navel oranges, Valencia oranges, miscellaneous oranges (including tangerines), lemons, grapefruit, limes, or any other commonly recognized

variety of the type of fruit in question, including, without limitation, green, red, or black grapes (seedless or otherwise).

- (k) “products fruit” means all fruit other than that defined as fresh fruit.
- (l) “volume marketed through Sunkist as shown by its records” means the average volume, in terms of one thousand (1,000) cartons or equivalent (or major fraction thereof), of the particular fruit involved, marketed through Sunkist during the three (3) preceding completed fiscal years, on which assessment or deductions for capital or revolving funds and Sunkist charges and expenses have been collected. For application of the formula in Bylaw 5.2 regarding the nomination of directors, those records shall also be compiled showing volume for each of the four (4) preceding completed fiscal years. As soon after the close of a fiscal year as such volume records can be compiled, they shall be reported to the Board and, when approved or accepted by the Board, shall be the basis for determination of volume whenever pertinent under these Bylaws. Any fruit exempted from the requirement of delivery as provided in Bylaw 9.3(b) shall not be included in volume as herein defined. In determining such average volume, appropriate adjustments may be made in such manner as determined by the Board upon evidence satisfactory to it, in the case of transfers of Growers and Growers who have marketed through Sunkist for less than three (3) years.

ARTICLE II

MEMBERSHIP

- 2.1 **General Organization** – Throughout California and Arizona since the 1880’s citrus growers have formed themselves into cooperatives or have constructed or contracted for facilities to pick, pack and market their fruit in fresh or products form. Local nonprofit cooperative packinghouse organizations have been known and will in these Bylaws be referred to as “Local Associations”. The Local Associations created regional marketing agencies in common generally known, and will in these Bylaws be referred to, as “District Exchanges”. In addition to those growers who formed Local Associations, some growers have become direct members of their respective District Exchanges for marketing purposes, preferring to contract individually for packing services. Sunkist was, in turn, formed by the Growers, Local Associations and their District Exchanges, in order to furnish additional facilities and agencies in maintaining, extending and making more efficient the marketing of the Growers’ citrus fruit. Sunkist and its member District Exchanges, Local Associations and Growers constitute the cooperative marketing system sometimes referred to as the “Sunkist System”.

- 2.2 A fundamental purpose of the Sunkist System is to market the Growers’ citrus fruit and the fruit of the Class A Members in the form received, or in processed, or other form at the highest return to such Growers and Class A Members, consistent with their long-term interests. In carrying out such purpose, Sunkist shall act as a nonprofit cooperative marketing association. Sunkist may, at the discretion of the Board, also market, in the form received or in processed or other form, the fruit or products thereof, of nonmembers who are producers, or of any nonprofit cooperative association of such producers, insofar as the same may be done in compliance with federal and state laws and regulations applicable to farmers’ marketing cooperatives; but such nonmember business shall not exceed fifty percent (50%) by value of the total marketing business.

Classes of Members – There shall be four (4) classes of members:

- (a) “Growers” who shall be Persons engaged in the production of citrus fruit to be handled by or through the Sunkist System. Such Growers must also be members of a Local Association or District Exchange;
- (b) “Local Associations” which shall be nonprofit cooperative associations of Growers. Each Local Association must also be a member of a District Exchange; and
- (c) “District Exchanges” which shall be nonprofit cooperative associations composed of Growers and Local Associations; and
- (~~and~~) “Class A Members”, which or who include other Persons admitted in the sole discretion of the Board from time to time, which or who are engaged in the production of fruit to be handled by or through Sunkist other than, or in addition to, citrus fruit, but would not qualify under any of the other three categories of membership with respect to such production. A Person may be both a Grower and a Class A Member, and the respective rights of each such membership shall be as provided in these Bylaws and in the separate agreements between Sunkist and such Person.

2.3

Agreements with District Exchanges, Local Associations and Licensed Packinghouses –

Each Local Association and District Exchange shall maintain appropriate written agreements between itself and its Growers which will provide for the delivery to such Local Association or District Exchange of all the fruit covered by such agreements. Each such agreement shall specify that such Grower is and shall be a member of Sunkist, so long as said Local Association or District Exchange shall be a member thereof, and subject to the Growers’ right to withdraw from Sunkist, the District Exchange and Local Association. Each Local Association and District Exchange shall furnish to Sunkist, upon request, a list of Growers then affiliated with said Local Association or District Exchange and a copy of its agreement with Growers. Each District Exchange and Local Association shall act as the agents for their Growers in the receipt and distribution of proceeds under Bylaws 9.4(g) and 9.5(d), and the collection of capital contributions and maintenance of capital accounts under Bylaw 10.4.

Sunkist’s only responsibilities with respect to the distribution of proceeds shall be to comply with the relevant portions of Bylaws 2.3, 9.4(g) and 9.5(d). Upon completion of such responsibilities, Sunkist shall have discharged all of its obligations with respect to the distribution of proceeds and no Grower or Class A Member shall have any recourse against Sunkist in connection therewith. Sunkist does not guarantee the performance of any obligations by any third party including, without limitation, any member of Sunkist or any independent packinghouse.

Growers who contract for packing services with packinghouses, which have been licensed by a District Exchange and Sunkist, designate the District Exchange and the licensed packinghouse with which they contract, as their agents in certain dealings with the District Exchange and Sunkist. In particular, the District Exchange and the designated licensed packinghouse shall act as the agents of those Growers in the receipt and distribution of proceeds under Bylaws 9.4(g) and 9.5(d), and the collection of capital contributions and maintenance of capital accounts under Bylaw 10.4.

Class A Members shall contract for packing services with packinghouses which have been licensed by Sunkist, and shall designate the licensed packinghouse with which they contract, as their agents in certain dealings with Sunkist. In particular, the designated licensed packinghouse shall act as the agents of those Class A Members in the receipt and distribution of proceeds under these Bylaws and/or their Class A membership agreements.

Representative of Member – If any member is other than a natural Person, such member may be represented by any individual, associate, officer or manager or member thereof, duly authorized in writing filed with the secretary of Sunkist.

2.4 **Membership Agreement** – Persons qualified under Bylaw 2.2 may apply to become members of Sunkist by submitting to Sunkist an executed membership agreement. Such agreement shall be in such form or forms as may from time to time be prescribed by the Board. In addition to the terms and conditions of the membership agreement itself, and as a material part of the consideration given by a member for his, her or its membership, members shall be bound by
2.5 Sunkist's Articles of Incorporation and these Bylaws as in force at that time or as the same may be thereafter amended. When executed and delivered by Sunkist, the membership agreement, together with such Articles of Incorporation and Bylaws, shall constitute a contract between the member and Sunkist, for the benefit of each and every other member of Sunkist. The Board may refuse to accept any membership application or membership agreement for any reason. Membership agreements existing at the time that the Board prescribes a new or amended form of membership agreement shall be deemed (automatically and without further signature, written, oral or other consent or any other act of the members) to have been amended to conform to the new or amended form of membership agreement prescribed by the Board; provided, however, that no such deemed amendment of an existing membership agreement shall be effective as to any member who or which delivers written notice of termination of such member's membership within thirty (30) days after written notice of the new or amended form of membership agreement is delivered to such member in accordance with Section 11.2 of these Bylaws.

2.6 **Membership Certificate** – As evidence of acceptance by Sunkist of said membership agreement Sunkist may issue a membership certificate to each member in a form to be adopted by the Board.

2.7 **Nontransferability of Membership** – No membership shall be assigned or transferred either voluntarily or involuntarily or by operation of law, nor shall any membership or membership rights of a member be assigned, transferred, alienated or encumbered in any manner or by any means whatsoever; provided, however, that nothing herein contained shall be deemed to impair
2.8 the transferability of capital credits as hereinafter provided in Bylaw 10.9.

Termination of Membership – Any membership in Sunkist shall be terminated upon occurrence of any of the following events:

- (a) If the member ceases to be a producer or cooperative association of producers within the meaning of applicable federal and state laws and regulations; or
- (b) By death of the member or dissolution of the member unless such dissolution is effected for the purpose of changing the identity or legal form of the member or terminating membership at a time not otherwise permitted by the Bylaws of Sunkist or the membership contract; or
- (c) As to a Grower member, by termination of his/her membership in his/her Local Association or District Exchange; or
- (d) Except as to Class A Members, by a Local Association, by a District Exchange or by Sunkist for any reason by delivering written notice of termination to the other party upon no less than ninety (90) days prior written notice. (Such notice and termination shall apply to each and every variety of Grower citrus fruit that is grown by all Growers within the subject Local Association or District Exchange, but the effective date of any such termination as to each such variety shall vary: such effective date shall be 11:59 p.m. on the last calendar day of the calendar month in which the harvest season within the relevant growing area(s) for each such

variety ends (“**Harvest End Date**”), it being understood that the Harvest End Date for a given variety may vary according to the geographical area in which it is grown; or

- (e) As to Class A Members, by termination as provided in the Class A membership agreement; or
- (f) By expulsion as provided in Bylaw 2.9

The provisions of Bylaw 2.8(c) above notwithstanding, no membership agreement may be terminated during any varietal season without the approval of Sunkist.

2.9

Expulsion – Any member may be expelled by a majority vote of the authorized number of the Board for failure to comply with its Sunkist membership agreement, the Bylaws or rules and regulations issued thereunder, or by a two-thirds (2/3) vote of the authorized number of directors if termination of such membership is judged to be in the best interests of other members. Before vote upon a proposal to expel any member, such member shall be given notice and a fair and reasonable opportunity to be heard at a regular or special meeting of the Board. Any action of the Board hereunder shall be final and conclusive. Upon expulsion, all voting and property rights of the member so expelled shall cease and terminate except that such member shall be entitled to receive payment of any outstanding revolving fund, capital or other allocated reserve credits (less any indebtedness to Sunkist) to be paid in the manner and at the time such payment would have been paid had such membership been continued.

- 2.10 **Good Agricultural Practices** - Regardless of whether such covenant appears in the membership agreement, all Growers and all Class A Members shall at all times comply with good agricultural practices and all laws and regulations pertaining to such practices, and Sunkist shall have such access to Grower’s and Class A Member’s books and records as Sunkist deems reasonably necessary to enable Sunkist to confirm Grower’s and Class A Member’s compliance with such practices, laws and regulations.

- 2.11 **Horticultural Advice and Information** – Members may request and/or otherwise receive from time to time written or oral advice and information from Sunkist and/or its employees or representatives pertaining to their horticultural practices or plans, including, without limitation, the location, planting, growth, cultivation, harvesting, storage or shipment of their fruit (collectively, “Horticultural Advice”). By accepting membership in Sunkist, each member understands and agrees that in the absence of a written statement from Sunkist specifically negating this Section 2.11, neither Sunkist nor any employee or representative thereof is representing, warranting or otherwise guaranteeing that any Horticultural Advice is accurate or complete or otherwise constitutes the best or most appropriate Horticultural Advice for the member’s circumstances. Members who rely on any such Horticultural Advice do so at their own risk, and are advised to independently review and determine the reliability of any and all Horticultural Advice received from Sunkist, its employees or representatives.

3.1

ARTICLE III

VOTING RIGHTS

Growers – All voting power within Sunkist shall ultimately be exercised by Growers, through the representative channels of their respective Local Associations or District Exchanges. Growers shall have the sole voting power in, and control of, their Local Associations and District Exchanges, including the power to elect the boards of directors thereof.

Each Local Association and District Exchange shall within each of their fiscal years conduct a regular annual meeting of members at which directors shall be elected. To ensure that each Grower member of Sunkist has an opportunity to vote within the Sunkist System at an annual meeting of either a Local Association or a District Exchange, each Local Association and District Exchange shall provide written notice of its regular annual meeting to each of its members, including each Grower member, if any.

3.2 **Local Associations and Voting Units of Growers** – For purposes of voting, Growers who are not members of Local Associations shall be grouped with relation to packing facilities preparing their fruit for market, in accordance with the Bylaws of the respective District Exchanges. Such grouping is herein called a “voting unit” of Growers. Each voting unit of Growers shall exercise its voting right in Sunkist through the Person or Persons it nominated on the Board of its District Exchange. Local Associations and the District Exchange director or directors nominated by each voting unit of Growers shall exercise their Growers’ vote upon all questions requiring membership action except the election of directors. All such voting shall be based on volume of fruit marketed and each Local Association or voting unit shall be entitled to one (1) vote for each one thousand (1,000) cartons or equivalent (or major fraction thereof) of the volume of citrus fruit, fresh and products, marketed by Local Association or voting unit through Sunkist during the average of the three (3) preceding completed fiscal years of Sunkist, as shown by its records, as provided in Bylaw 1.2(l). In the event any question requiring concurrence of directors representing a specified percentage of volume for Board action is submitted to a vote of members, a majority vote thereon to be effective must include the votes of members representing a like percentage.

3.3 **Varietal Voting** – It is recognized that certain questions may from time to time arise relating solely to the promotion of a particular variety of fruit and the assessment relating thereto. To the extent that such questions, as herein more particularly specified, are referred to the members for vote under this Bylaw, either at a meeting of members or by mail, the following provisions shall apply:

- (a) **Procedure** – At the request of Local Associations or voting units of Growers representing one-fifth (1/5) of the voting power of a particular variety or at the request of one-third (1/3) of the authorized number of directors, any question subject to varietal voting shall be submitted to a vote of Local Associations and voting units of Growers on a varietal basis. The affirmative vote of the three-fourths (3/4) of the voting power represented by such variety shall be binding upon all members insofar as it concerns the promotion of the variety involved and the assessment relating thereto.
- 3.4 (b) **Varietal Questions** – Voting by Local Associations and voting units of Growers shall be on a varietal basis on any question relating to the appropriation or use of funds for advertising, promotion or research to be raised solely by assessing a single variety but nothing herein contained shall be construed to authorize varietal voting on assessments resulting from an allocation between varieties of the general cost of maintaining any department or facility of Sunkist for the use of more than one variety.

3.5 **District Exchanges** – District Exchanges shall have the exclusive power to nominate and elect directors, but shall have no other voting rights. Each District Exchange shall nominate only as many directors as it shall be entitled to under Bylaw 5.2. Each District Exchange shall be entitled to cast votes for election of directors in accordance with the following formula: the number of directors which it is entitled to nominate under Bylaw 5.2 multiplied by the number of directors to be elected.

Class A Members– Class A Members shall have voting rights limited to:

- (i) Recommendations to the Board with respect to the admission or expulsion of Class A Members;
- (ii) Recommendations to the Board with respect to allocation of patronage dividends to and within Class A Member pools; and
- (iii) Any other matters determined by the Board in its sole discretion from time to time.

It is recognized that certain questions may from time to time arise relating solely to the promotion of a particular variety of Class A Member fruit and the assessment relating thereto. To the extent that such questions, as herein more particularly specified, are referred to the Class A Members for recommendatory vote under this Bylaw, either at a meeting of such Class A Members or by mail, the following provisions shall apply:

(a) Procedure – At the request of Class A Members representing one-fifth (1/5) of the voting power of a particular variety, any question subject to varietal recommendatory voting shall be submitted to a vote of the Class A Members on a varietal basis. The affirmative vote of the three-fourths (3/4) of the voting power represented by such variety shall be binding upon all Class A Members insofar as it concerns the promotion of the variety involved and the assessment relating thereto.

(b) Varietal Questions – Recommendatory voting by Class A Members shall be on a varietal basis on any question relating to the appropriation or use of funds for advertising, promotion or research to be raised solely by assessing a single variety but nothing herein contained shall be construed to authorize varietal voting on assessments resulting from an allocation between varieties of the general cost of maintaining any department or facility of Sunkist for the use of more than one variety.

3.6

Proxies – Any District Exchange, Local Association, District Exchange director nominated by a voting unit of Grower or Class A Member entitled to vote at a membership meeting (including a Class A membership meeting) or to execute consent shall have the right to do so either in person or by proxy, which proxy shall be in writing executed by the member or its duly designated representative and filed with the secretary of Sunkist. No proxy shall be valid after the expiration of ninety (90) days from its date.

3.7

Voting by Mail – Whenever so authorized by these Bylaws or by the Board, a membership vote (including a Class A membership vote) may be conducted by mail, without the necessity of a meeting. Subject to Section 603(d) of the CGCL, to be effective, the total vote cast by mail on any question shall be not less than the number required to constitute a quorum had such vote been taken at a meeting of members.

4.1

ARTICLE IV

MEETING OF MEMBERS

Place of Meetings – All meetings of members shall be held at the principal office of Sunkist or at such other place as may be designated by the Board. Members may participate in any meeting of the members by electronic transmission by and to Sunkist or by electronic video screen communication, so long as Sunkist provides members a reasonable opportunity to participate in the meeting and to vote on matters submitted to members, and if any member votes or takes other action at the meeting by means of electronic transmission or electronic video screen communication, a record of that vote or action is maintained by Sunkist.

4.2 **Regular Annual Meeting** – A regular annual meeting of all Sunkist members (other than Class A Members, ~~if any~~, who shall have separate Class A membership meetings at least annually at times and places specified by the Board from time to time) shall be held ~~at 10 a.m. on the first Wednesday in February of each year, or at such other time of day within~~during normal business hours ~~or on such other on a business day in March of each year, or during~~ normal business hours ~~on such other business day in January or February,~~ as may be designated by the Board ~~not later than the last day of December preceding~~at least ten (10) days prior to such annual meeting of members. At such meeting directors shall be elected, reports of the affairs of Sunkist shall be considered and any business may be transacted that is within the power of the members.

4.3 **Notice of Regular Annual Meeting** – No less than ten (10) and no more than sixty (60) days notice of each regular meeting of the members shall be given as provided in Bylaw 11.2. Such notice shall state the place, the day and the hour of the meeting and that the purposes thereof are the election of directors and the transaction of such other business as may come before the meeting.

4.4 **Special Meetings** – Except in those instances where a particular manner of calling a meeting or obtaining a vote of members is prescribed by law or in these Bylaws, a special meeting of all members or of the members of any class may be called at any time by the chairperson of the Board, or on demand of one-third (1/3) of the directors, or by members entitled to exercise one-fifth (1/5) of the voting power. No business shall be transacted at a special meeting other than such as is included in the purposes stated in the notice.

4.5 **Notice of Special Meeting** – Notice of each special meeting shall be given in the same manner as for annual meetings. Notice of any special meeting shall specify the purposes of the meeting, in addition to the place, the day and the hour of such meeting.

4.6 **Adjournment and Notice** – Any members' meeting, whether or not a quorum is present, may be adjourned from time to time by a vote of the majority of the voting power of the members present in person or by proxy, but in the event there is not a quorum initially present at any members' meeting, no other business may be transacted. When any meeting of members is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any notice of adjournment other than by announcement at the meeting at which adjournment is taken nor shall it be necessary to give any notice of the business to be transacted at an adjourned meeting.

4.8 **Quorum** – At any meeting of all members, or of any class of members, the presence in person or by proxy of Persons entitled to vote a majority of the voting power entitled to vote at such meeting shall constitute a quorum for the transaction of business, except as otherwise may be required by law. The members present at a duly called and held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Consent of Absentees – The transactions of any meeting of members, either regular or special, however called and noticed, shall be as valid as though had at a meeting duly held upon regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

ARTICLE V

DIRECTORS

Number and Qualifications

- 5.1
- (a) Number - The authorized number of directors of Sunkist shall not be less than seventeen (17) nor more than thirty-two (32). Within the foregoing limits, the authorized number of directors shall be established by the Board, from time to time, in accordance with the formula contained in Bylaw 5.2.
 - (b) Qualifications - The Board shall set by resolution from time to time the qualifications and characteristics required to be met by each individual nominated and elected to the Board; provided, however, that such qualifications and characteristics shall include, at a minimum, the following: each director or director nominee must:
 - (1) Market through Sunkist, for himself or herself, or for a Grower entity which he or she represents as an officer, manager, member or other capacity with (in any case) primary responsibilities directly related to the production of citrus fruit, at least 80% of his, her or such Grower entity's eligible fresh and product citrus volume (when computing whether a director or director nominee markets at least 80% of his or her eligible fresh and products citrus volume through Sunkist, volume that he or she does not own, or owns only indirectly through an entity or otherwise, shall be disregarded if he or she does not control (or have the ability to control) the decision as to whether Sunkist shall market such volume);
 - (2) Commit the time and energy necessary to serve effectively as a Sunkist director;
 - (3) Not be a principal, controlling owner, director or officer, or involved in management of, a Person, or have substantial financial interest in a Person (as determined by the Board), that competes with Sunkist, unless an exception for such director or director nominee is approved by the Board;
 - (4) Not have a criminal record involving moral turpitude; and
 - (5) Certify annually in writing that he or she meets all the then-applicable qualifications to be a Sunkist director or director nominee.
 - (c) Enforcement
 - (1) No later than thirty (30) calendar days prior to the nomination of any director, the nominating District Exchange shall submit to the Board all materials reasonably requested by the Board to allow the Board to evaluate whether such candidate satisfies the requirements set forth by the Board in accordance with Bylaw 5.1(b) and whether such candidate possesses the characteristics contemplated to be set forth by the Board in accordance with Bylaw 5.1(b) (such materials to include without limitation a certification executed by such candidate that he or she meets all of the qualifications set forth by the Board in accordance with Bylaw 5.1(b)).
 - (2) If a written notice is delivered to the Board alleging that an elected director does not meet one or more of the qualifications set forth by the Board in accordance with Bylaw 5.1(b), the Board shall evaluate such allegation and conduct any necessary and

appropriate investigation in connection therewith. If, after such evaluation and investigation, the Board concludes that an elected director does not meet such qualification(s), the Board shall take whatever action is necessary to terminate such director's directorship, including, without limitation, voting such director off the Board.

5.2 **Election of Directors** – Each District Exchange shall be entitled to nominate one (1) director and one (1) alternate director. Each alternate director nominee and each alternate director must meet the requirements of Bylaw 5.1(b), but shall become a director and serve as such only as provided in Bylaw 5.6(b). Additional directors (but not alternate directors) may be nominated by District Exchanges, on the basis of the average volume of all fruit marketed through Sunkist as shown by its records during any combination of three (3) of the four (4) preceding fiscal years, as provided in Bylaw 1.2(l), which will result in each District Exchange being able to nominate the greatest number of directors in accordance with the following formula; provided, however, that the divisor used to compute the District Exchange percentages shall be the total of the three-year average volumes used for all the District Exchanges such that the sum of the percentages that each District Exchange three-year volume bears to the total of all such three-year volumes shall not exceed one hundred percent (100%):

Each District Exchange shall be entitled to nominate one (1) additional director for each whole four percent (4%) increment of such volume which such District Exchange has in excess of two percent (2%) of such volume.

5.3 Each District Exchange having less than two percent (2%) of such volume, as reflected in any two of the three most recent compilations of such volume approved or accepted by the Board, shall, for the purpose of nominating directors as specified above, combine its volume with one or more other District Exchanges in such manner as shall allow such combination of District Exchanges to nominate not less than one (1) director in accordance with the above formula as though they were a single District Exchange, and such combination of District Exchanges may so nominate a director or directors as though they were a single District Exchange. If such combination of District Exchanges is not achieved by mutual consent, the Board shall specify such combination. Within each such combination of District Exchanges the nominee or nominees of such combined District Exchanges shall be determined between or among such District Exchanges by a vote on the basis of their respective amounts of such volume.

5.4 **Election and Term of Office** – The directors shall be elected annually by District Exchange members at the time of the regular annual meeting of the members, but if any such annual meeting is not held, or the directors are not elected thereat, the directors may be elected at any special meeting of District Exchange members held for that purpose. Any director shall hold office until the earliest of the time that (a) his/her successor is elected, (b) his/her resignation is effective, (c) he/she is removed from office, or (d) he or she is found to be ineligible to continue serving as a director under Bylaw 5.1(c)(2). Alternate directors shall be elected as alternate directors in the same manner as directors are, but no alternate director shall be or become a director except as provided in Bylaw 5.6(b).

Resignation – Any director may resign by giving notice in writing to Sunkist as permitted by Section 305(d) of the CGCL. Unless the notice specifies a later time, the resignation will be effective when notice is given. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Removal – Unless otherwise restricted by the Articles or the CGCL, any director or the entire Board may be removed, with or without cause, by the holders of a majority of the voting power entitled to vote at an election of directors.

Vacancies; Absence from a Meeting

- 5.5 (a) **Vacancies** - Subject to Bylaws 5.2 and 5.6(b), vacancies resulting from any death, resignation, disqualification, removal or other cause shall be filled by the alternate director of the District Exchange that nominated the director who previously occupied the newly vacant Board position, or (if the District Exchange so determines) by such other individual who meets the requirements of Bylaw 5.1(b). Vacancies constituting newly created directorships resulting from any increase in the authorized number of directors shall be filled by the members in accordance with these Bylaws. If a District Exchange's alternate director vacates his alternate director position (whether because of death, resignation, disqualification, removal or other cause or because the alternate director becomes a director per this Bylaw 5.6(a)), then the District Exchange may nominate a new alternate director, who shall become the District Exchange's alternate director upon the occurrence of both of the following events: (i) the alternate director shall comply with Bylaws 5.1(b) and 5.1(c), and (ii) a majority of the authorized number of directors shall approve such alternate director.
- 5.6 (b) **Absence from a Meeting** - If a director is absent from a meeting of the Board, and the alternate director previously elected by the appropriate District Exchange is present, (i) that absent director shall be deemed to have resigned as director; (ii) the alternate director shall be deemed to have been elected to fill that vacancy and to hold office until the earlier of a successor is elected or the absent director returns; and (iii) the absent director shall be deemed to have become the alternate director for the prior alternate director then elected as director by virtue of this Section 5.6(b). The absent director shall in any case return to his or her status as director at any meeting that he or she subsequently attends, and the original alternate director shall return to his or her status as such at that time as well.

- 5.7 **Place of Meetings** – Meetings of the Board shall be held at the principal office of Sunkist, or at any other place within or without the State of California which has been designated by the Board or by written consent of all members of the Board.
- 5.8

Meetings

- (a) **Regular Meetings** - The Board shall have the following ~~two (2)~~three (3) regular meetings during each twelve (12) month period:
- (1) Immediately after the regular meeting of the members at which the annual election of directors takes place (as contemplated in Bylaw 4.2), the Board shall hold a regular meeting for the purpose of organization, election of officers (including the chairperson and three (3) vice chairpersons), designation of members to each committee established in accordance with Article VII and the transaction of other business. Notice of such meeting is hereby dispensed with.
- (2) ~~The Board shall also hold a regular meeting at 10 a.m. on the last business day in July in August of each year, or at such other time of day within normal business hours or on such other earlier normal business day, as may be designated by the Chair or by the Board not later than thirty (30) days immediately preceding the scheduled and duly noticed.~~

~~(3) The Board shall also hold a regular meeting date, for purposes of developing and managing strategic initiatives for Sunkist with members of in October of each year, or at such other time as may be designated by the Chair or by the executive management team of Sunkist Board and duly noticed.~~

~~(2) (4) The Board shall hold such other regular meetings as the Board may provide by resolution and as duly noticed.~~

(b) Special Meetings – A special meeting of the Board shall be held whenever called by the chairperson of the Board, or by any vice chairperson of the Board in the absence of the chairperson of the Board, or by one-third (1/3) of the directors. Any and all business may be transacted at a special meeting.

(c) Participation in Meetings by Conference Telephone - Members of the Board may participate in any meeting of the Board through use of conference telephone, electronic video screen communication or electronic transmission by and to the Corporation, so long as, (i) in the case of participation through use of conference telephone or electronic video screen communication, all members participating in the meeting can hear one another, and (ii) in the case of participation in the meeting through other electronic transmission, each member participating in the meeting can communicate with all of the other members concurrently and each member is provided the means of participating in all matters before the Board (including without limitation the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation).

5.9 Notice of Meetings of Directors – Notice of each special meeting of the Board, as well as the regular meeting of the Board contemplated in Bylaw 5.8(a)(2) shall be given pursuant to Bylaw 11.2, showing the time and place, at least forty-eight (48) hours prior to the time of such meeting.

5.10 Adjournment – Notice of the time and place of holding an adjourned meeting need not be given to absent directors, if the time and place be fixed at the meeting adjourned and the adjournment is for a period of not more than seven (7) days.

5.11 Waiver of Notice – The transactions of any meeting of the Board however called and noticed or wherever held, shall be as valid as though had at a meeting duly held, after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Furthermore, notice of a meeting need not be given to a director who attends the meeting, without protesting, prior thereto or at its commencement, for lack of notice to that director.

5.12 Quorum – A majority of the authorized number of directors shall be necessary to constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present will be regarded as the act of the Board, unless a greater number is required by the CGCL, by the Articles or by the Bylaws. A meeting at which a quorum was present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for the meeting.

Action Without Meeting – Unless restricted by the Articles or these Bylaws, any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all

members of the Board consent to the action in writing or by electronic transmission. Written consent or consents will be filed with the minutes of the proceedings of the Board.

Fees and Expenses – Directors shall not receive any stated salary for their services as directors, but by resolution of the Board, a fixed Board fee and/or out-of-pocket expenses may be paid for attendance at any meeting of the Board or at any Board committee meeting.

ARTICLE VI

5.14

POWERS OF DIRECTORS

6.1

General Powers – Subject to the limitations of the Articles, of the Bylaws and of the statutes of the State of California (including, without limitation, the CGCL and Cal. Ag. Code), all corporate powers shall be exercised by or under the authority and ultimate direction of, and the business and affairs of Sunkist shall be managed and controlled by, the Board. Without prejudice to such general powers, but subject to the same limitations, it is expressly declared that the Board shall have the following exclusive powers:

- (a) To conduct, manage and control the affairs and business of Sunkist and to make rules and regulations not inconsistent with the laws of the State of California, the Articles or the Bylaws, for the guidance of its officers and the management of its affairs.
- (b) To borrow money and incur indebtedness for the purposes of Sunkist, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of indebtedness and securities therefor, and to do every act and thing necessary to effectuate the same.
- (c) To establish grades for fruit and for products with rules and regulations pertaining thereto, and to prescribe the standards of quality for fruit and products to be marketed under such grades, and to permit licensed packinghouses, Local Associations and District Exchanges to pack or deliver their fruit under such grades upon compliance with such prescribed standards and with all rules and regulations established pursuant hereto.
- (d) To prescribe rules and regulations in connection with the use of any trademarks, trade names, brands, patents or copyrights owned or controlled by Sunkist and any such rules or regulations may be changed from time to time.
- (e) To provide for the preparation of financial statements and reports, to prescribe their form and to provide for appropriate distribution thereof to members. The provisions of Section 1501 of the CGCL and of Section 54204 of the Cal. Ag. Code are expressly dispensed with.
- (f) To appoint one or two (but not more than two at any one time) advisors to the Board, which advisors shall (i) provide advice to the Board in such areas as the Board may identify as necessary or desirable; (ii) receive such compensation and have such responsibilities as the Board may determine; (iii) be elected at a regular meeting of the Board to serve for a term not to exceed two years; provided that a majority of the Board shall have the right to dismiss any advisor at any time; (iv) not have the power or right to vote as a director upon any matter that may come before the Board; and (v) not be an Affiliate of any Sunkist member unless this requirement (v) is specifically waived in a resolution duly adopted by the Board.

6.2

Charges and Expenses

- (a) Assessments or Deductions – All charges and expenses of Sunkist, including deductions for such reasonable reserves as may from time to time be prescribed by the Board, shall be met by assessments for deductions upon District Exchanges or Local Associations or Class A Members. Additions to so-called valuation reserves (such as depreciation, bad debts, etc.) permitted as deductions under the Internal Revenue Code, including the accelerated cost recovery system, shall be deemed to be deductions for reasonable reserves. The method, amount, manner and time of assessment or deduction shall be fixed and determined from time to time by the Board. Each District Exchange or Local Association or Class A Member shall pay to Sunkist when due the amount of any assessments or deductions hereunder.
- (b) Refunds – Any amount by which the marketing or other assessments or deductions hereunder exceed the actual cost (including in such cost any reserves prescribed as provided in these Bylaws) shall be refunded to the Persons from whom collected as promptly as accounting procedure permits.
- (c) Set-off – Any amount due Sunkist from any member or other producer as an assessment, deduction or otherwise may be set off against any amount which Sunkist is or may become obligated to pay such Person. In the event of any prospective termination of membership or other affiliation, Sunkist shall be entitled to retain any amounts which in the judgment of Sunkist may be reasonably necessary to secure payment of amounts which Sunkist anticipates may subsequently become due to Sunkist from the parties to or affected by such termination.

ARTICLE VII

COMMITTEES OF THE BOARD

- 7.1 Committees of the Board – The Board may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees, each consisting of two or more directors, to serve at the pleasure of the Board. The Board may designate (a) one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee, and (b) individuals who are not directors to serve on any committee. The appointment of members, alternate members and nondirector individuals of a committee requires the vote of a majority of the authorized number of directors, except as provided for otherwise in a resolution adopted by the Board. The Board shall, by a resolution adopted by a majority of the authorized number of directors, set forth the functions, duties and powers of each Board Committee, provided that in any case, and notwithstanding any such resolution, each Board Committee shall at all times be subject to the general direction and control of the Board and to the provisions of Section 311 of the CGCL. Unless otherwise prescribed by the Board, a majority of the members of any committee of the Board shall be a quorum for the transaction of business, and the act of a majority of the members present at a meeting at which there is a quorum will be the act of that committee. Otherwise, each committee of the Board may prescribe its own rules for calling and holding meetings and its method of procedure, subject to any rules prescribed by the Board, and shall keep a written record of all actions taken by it.

8.1

ARTICLE VIII

OFFICERS AND MANAGEMENT

Corporate Officers – The officers of Sunkist shall be elected by the Board and shall be a chairperson of the Board, one vice chairperson of the Board for each growing district as such districts may be established from time to time by the Board, a president, one or more vice presidents, a secretary and a treasurer. The Board may also appoint one or more assistant

secretaries or assistant treasurers and any other corporate officers which the Board may see fit in its discretion to designate. The chairperson of the Board and vice chairpersons shall be elected by the Board from their number. Neither the chairperson of the Board nor any vice chairperson may be elected to that office more than five successive times. One Person may hold two or more offices except that the offices of president and secretary may not be held by the same Person.

8.2 **Election and Term of Office** – Officers shall be elected annually at the organization meeting of the Board following the annual meeting of members, or at such other time as the Board shall determine. Unless sooner removed by the Board, or unless they resign or become disqualified, all officers shall hold office for their elected term of office until their successors are chosen and have qualified. Any officer, whether elected or appointed by the Board, may be removed at any time by a majority vote of the authorized number of directors. A Board vote to reduce the number of directors within the number range set forth in Bylaw 5.1 shall not prevent a then duly elected and acting director from completing his or her term.

8.3 **Powers and Duties** – Subject at all times to the control and direction of the Board, each officer shall have and exercise the powers and duties usual to his office. The chairperson of the Board shall, if present, preside at all meetings of members and of the Board. In the absence of the chairperson of the Board, a vice chairperson of the Board designated by the Board shall assume the powers and duties of the chairperson of the Board.

8.4 **Management** – The president shall be the chief executive officer of Sunkist and shall, subject to the control and direction of the Board, have general and active management, direction and control of the business, officers (other than the chairperson of the Board and any vice chairperson of the Board), and employees of Sunkist. He/she shall conduct the business operations and affairs of Sunkist in accordance with the policies and directives of the Board, and according to his/her own discretion whenever not expressly guided by such policies and directives.

ARTICLE IX

9.1 MARKETING

9.2 **Marketing Obligation** – Each Local Association shall market all of the fresh citrus fruit subject to its control through the District Exchange with which it is affiliated. Each District Exchange shall market through Sunkist all of the citrus fruit subject to its control. Each Local Association and District Exchange shall deliver to Sunkist all of the products citrus fruit subject to its control. Sunkist shall market all of said citrus fruit both fresh and products and shall determine the methods of marketing to be adopted in any or all markets, and the types of containers and methods of packaging to be used. Each Grower shall have all of his/her fruit produced on the acreage covered by his/her membership contract graded and packed or otherwise handled by a packing facility of a Local Association or by a packing facility licensed by Sunkist to perform such service.

Marketing Agency Created – Each Local Association and District Exchange designates and appoints Sunkist as its agent and the agent of its Growers, in all matters concerning the marketing of its fresh fruit, and the processing and marketing of its products fruit. Full power and authority are conferred upon Sunkist as such agent to conduct its marketing activities in such manner as it, in its sole discretion, determines to be for the best interests of all of its members. As such agent, Sunkist may inspect any records pertaining to the disposition of fruit maintained by or for any member, including any or all records maintained by any federal or state marketing committee or board pertaining to such member. Also, as requested by Sunkist, each Local Association and each District Exchange shall furnish Sunkist with detailed information concerning the amount,

volume, and value of all fresh and products fruit marketed by each Grower member or patron of such Local Association or District Exchange. Information concerning the amount, volume and value of fruit marketed by any Grower member or patron of a Local Association or District Exchange shall be used by Sunkist only for appropriate corporate purposes.

General Marketing Plan – In carrying out the basic purpose of marketing the Growers' citrus fruit at the highest return to the Growers, the Sunkist System has adopted the following general marketing plan:

- 9.3
- (a) **Fresh Fruit** – Sunkist shall develop and determine the market opportunities for each variety of fruit to be marketed by its members. Sales shall be made through the facilities and agencies furnished or designated by Sunkist.
 - (b) **Products Fruit** – Products fruit shall be delivered to Sunkist, f.o.b. the packinghouse. Thereafter Sunkist shall market such products fruit either in the form received or in processed form.

Regulations Relating to Marketing Fresh Fruit – The following provisions relate and are applicable with regard to the marketing of fresh fruit by Sunkist:

- 9.4
- (a) **Reserved Right** – Each Grower and Local Association hereby delegates to its District Exchange the right to determine to what markets it shall ship, where its fruit shall be sold, and the price it is willing to receive; provided, however, that each Local Association and each voting unit of Growers affiliated directly through a District Exchange and packing fruit other than as a nonmember of a Local Association, may through the director or directors representing such Growers or Local Association, reserve the right from time to time to terminate this delegation and to exercise said rights for such period as they may deem proper or to redelegate said reserved right to said District Exchange.
 - (b) **Quotas and Allocation** – Sunkist may, by a majority vote of the authorized number of directors, determine the maximum amount of fresh fruit to be marketed currently and allocate the opportunity to ship equitably among its members; provided, however, that said majority includes directors representing eighty-five percent (85%) of the volume marketed through Sunkist, as shown by its records, of the variety (both fresh and products) under consideration. Such allocation shall be binding upon District Exchanges and Local Associations.
 - (c) **Contact with Buyers** – District Exchanges and Local Associations shall not solicit business from the trade or employ any solicitor or agent, or correspond with any buyer for the purpose of promoting the sale of their fresh fruit. The Board shall adopt and maintain guidelines explaining how the foregoing provisions shall be interpreted and applied to current operations. All prices, quotation and allowances shall be issued and distributed solely by Sunkist. Copies of correspondence with district managers in the markets by any District Exchange must be sent to Sunkist; and by any Local Association to Sunkist and to the District Exchange with which it is affiliated. District Exchanges shall be entitled to receive, upon request, copies of Sunkist correspondence relating to their fruit.
 - (d) **Transportation**
 - (1) **Routing** – Sunkist shall have authority to specify the carrier and route of all shipments of fresh fruit.

- (2) Facility – Sunkist may, by a majority vote of the authorized number of directors, which majority shall include directors representing seventy-five percent (75%) of the volume marketed through Sunkist, as shown by its records, of the variety (both fresh and products) under consideration, determine the transportation facility – whether by rail, by water or otherwise.
- (3) Pooling of Charges – Transportation costs, including but not restricted to costs of refrigeration and other protective services, incurred in connection with the movement of fresh fruit destined for points outside the state of origin, may in the manner and to the extent determined by a majority vote of the authorized number of directors, which majority shall include directors representing seventy-five percent (75%) of the volume marketed through Sunkist, as shown by its records, of the variety (both fresh and products) under consideration, be pooled equitably in relation to the different types of refrigeration and other protective services and paid by charges or assessments levied and apportioned as the Board may determine.
- (e) Losses and Customer Claims – The only losses for which Sunkist shall be responsible to District Exchanges or Local Associations are losses arising from the financial failure or default of purchasers after having positively accepted the fruit, which default is not due to complaint of the buyer concerning the quality, condition or grade of the fruit. Such losses shall be charged as part of the general marketing expense and paid in the method, amount and manner determined by the Board. In case of any controversies with customers wherein, in the judgment of the Board, the collective interest of members is involved, the judgment of said Board as to settlement of such dispute shall be final and binding upon the Local Association or District Exchange which furnished the fruit.
- (f) Pooling – Pools for fresh fruit may be established by the Board on a varietal basis and may include fruit produced in or destined for any particular geographical section, or fruit conforming or not conforming to specified standards of quality and/or size or fruit for Government use. Each Local Association and District Exchange director for his/her voting unit of direct Growers, other than those packing fruit as nonmembers of a Local Association, shall have the right to determine whether or not it will provide fruit for each such pool. Sales of fruit eligible for any such pool shall not be made in competition with pool fruit, except under marketing programs specifically approved by the Board. The rights reserved under Bylaw 9.4(a) shall be limited to the extent provided in this Bylaw 9.4(f). Any pool so established shall be pursuant to a pooling plan to be prescribed by the Board. Such plan shall specify the conditions of eligibility of fruit, the methods of operation and all rules and regulations in connection therewith, which shall include provision for equitable allocation of the marketing opportunity among those desiring to participate. Such pools may be established only by a majority vote of the authorized number of directors, which majority must include directors representing seventy-five percent (75%) of the volume marketed through Sunkist, as shown by its records, of the variety or varieties (both fresh and products) in the producing area under consideration. A pooling plan established to accommodate risks other than fresh fruit market risks need not provide for equitable allocation of marketing opportunities.
- (g) Obligation to Distribute Proceeds – All proceeds of sales of fresh fruit, after deduction of freight and other charges allocable, and after any deductions authorized pursuant to Bylaw 6.2, shall be remitted as rapidly as collection and accounting procedures permit, to the appropriate District Exchanges and Local Associations or other authorized Grower agents, and by them to the appropriate Growers.

- (h) Placement of Fresh Fruit Orders - Nothing in Sunkist's Articles of Incorporation, in these Bylaws, in any statements of Sunkist policy, or in the structure or operations of the Sunkist system, gives any Sunkist member, any Sunkist-affiliated packinghouse, or any other person or entity, any right or claim to any particular sales results. Sunkist shall have no liability for any claim based upon any failure to place, offer, direct, achieve, or provide an opportunity for, any volume, type, price, or other aspect of customer fruit orders or sales for any member, Sunkist-affiliated packinghouse or any other person or entity, regardless of whether such claim is based upon notions of mathematical proportionality, equity or equality of opportunity, sales volume estimates or otherwise; provided, however, that nothing in this Section shall limit or preclude liability of Sunkist on an individual contract claim based upon a specific offer and acceptance which exist separately from and are not contained in a membership agreement, a Sunkist statement of policy and/or these Bylaws. This Bylaw Section 9.4(h) supersedes any Sunkist membership agreement, statement of policy or other Bylaw which is inconsistent with this Section.

Regulations Relating to Marketing Products Fruit – The following provisions relate and are applicable with regard to the marketing of products fruit by Sunkist:

9.5

- (a) Power and Control of Sunkist in Handling Products Fruit – Sunkist may sell and market the products fruit of its members and other producers or the products produced therefrom, pledge or otherwise hypothecate the same or any part thereof, transfer title thereto, and collect and receipt for the proceeds in its own name exclusively, or in the name of any subagent. No member by virtue of having furnished any fruit shall exercise any control over Sunkist with regard to either the processing or marketing of said fruit, or the conduct of the business of Sunkist, in all of which matters Sunkist may, in good faith, use its own discretion and judgment, free from any direction by such member. The member shall not be directly liable under any rules of agency on account of any contract, or contracts, made by Sunkist in carrying on its business of marketing products fruit.
- (b) Pooling – Sunkist shall establish pools for the handling, processing and marketing of all products fruit. Each products fruit pool shall include such varieties or portions thereof as Sunkist may determine. Any pool so established shall be pursuant to a pooling plan to be prescribed by the Board, which plan may include, among other matters, provisions for (1) relating pool returns to value established at time of delivery, (2) contributing net margins to a varietal pool from other varietal pools to assure a minimum return equal to delivery advances, and (3) transfer of unsold inventory to succeeding pools at fair values determined by the Board, which determination shall be conclusive.
- (c) Delivery of Fruit and Freight Regulations – Sunkist may establish, maintain, and enforce an inspection for quality, and reject such products fruit as is not acceptable for products purposes, and may charge back freight thereon to the shipper. Sunkist shall govern the collecting and assembling of products fruit for shipment to Sunkist and may prorate shipments if supply exceeds capacity of available facilities. Sunkist shall provide for the equitable handling of freight charges on products fruit in order that no shipper may be at a disadvantage by reason of his/her location with reference to the location of the processing facilities of Sunkist.
- (d) Obligation to Return Net Proceeds – All proceeds of sales, less necessary operating and marketing expenses, and after any deductions authorized pursuant to Bylaw 6.2, shall be returned to the Persons entitled thereto, or their authorized agents, on the basis of the quantity or value of products fruit furnished. Such proceeds shall be so returned as promptly as the collection thereof, the financial position of Sunkist and accounting procedure may permit; provided, however, that any amounts assessed or deducted on the basis of the quantity or

value of fruit furnished as additions to reserves (other than deductions for so-called valuation reserves pursuant to Bylaw 6.2) in any fiscal year shall be apportioned on the books of Sunkist, to the Persons contributing thereto and an appropriate certificate or notice of such assessment or deduction (including the dollar amount thereof) shall be issued and delivered to each such Person within the period specified by law following the close of each fiscal year.

9.6 **Power Conferred by Statutes** – Sunkist shall have, and in its discretion may exercise, on an equitable basis on behalf of District Exchanges, Local Associations and Growers any and all powers relating to the marketing of fruit and products that Sunkist, District Exchanges, Local Associations and Growers are or may hereafter be authorized by state or federal statutes or by order or regulations based thereon to exercise. Any Grower, Local Association or District Exchange may, as to it, at any time and from time to time, terminate the authority conferred upon Sunkist by this Bylaw or again give such authority to Sunkist, provided that such termination does not under applicable law impair the exercise by Sunkist of any authority on behalf of other members. Sunkist shall be notified immediately in writing of any such termination of said authority, and unless so notified, Sunkist may exercise any of the powers referred to in this Bylaw.

9.7 **Warranty** – Each Local Association and each District Exchange warrants to Sunkist that it has the right to receive, pack and deliver for marketing and to market through Sunkist all of the fruit which it may deliver. Each of said members further warrants that said fruit and the disposition thereof shall comply with all state and federal statutes and regulations applicable thereto.

9.8 **Liquidated Damages for Member's Breach** – In the event that any member shall sell, market or dispose of any of the fruit that is to be marketed by or through Sunkist under the provisions of these Bylaws other than through the agency of Sunkist, such act will injure Sunkist and its members in an amount that is, and will be, impractical and extremely difficult to determine and fix. The said damages are, therefore, fixed at one dollar (\$1.00) per carton on all fresh fruit and sixty dollars (\$60) per ton for all products fruit that is sold, marketed or disposed of contrary to the provisions of these Bylaws. The member so violating the Bylaws agrees to pay, and shall pay, said amount to Sunkist as liquidated damages, and in default of payment thereof to Sunkist upon demand, the same may be recovered in an action in any court of competent jurisdiction in the name of Sunkist, in which case Sunkist shall recover from the member in addition to said liquidated damages, all costs, premiums for bonds, expenses and fees, including attorneys' fees, in such action. Nothing contained in this Bylaw 9.8 shall limit or diminish Sunkist's right to terminate a member's membership in Sunkist.

9.9

Governmental Marketing Regulation – Any action taken by Sunkist with respect to any governmental marketing regulation affecting a particular variety shall be determined by a majority vote of the authorized number of directors including directors representing eighty-five percent (85%) of the volume marketed through Sunkist as shown by its records, of the variety (both fresh and products) under consideration.

9.10 **Class A Members.** Notwithstanding anything to the contrary expressed or implied in this Article IX, nothing contained in this Article IX shall apply to the Class A Members or any Class A Member fruit. To the extent applicable to Class A Members or their Class A Member fruit, matters covered by this Article IX shall be set forth in the Class A membership agreements.

ARTICLE X

CAPITAL CREDITS

10.1 **Capital Requirements** – A capital fund continuing that heretofore known as the “Sunkist Revolving Fund” shall be maintained for the purpose of providing permanent, nonrevolving capital required to operate the business of Sunkist, through capital contributions by members in proportion to their respective use of the facilities and services furnished by Sunkist. The total amount of capital so required shall be determined from time to time by the Board. The proportionate share of such amount to be provided by each member shall be based on volume or value or both of fresh fruit and products fruit marketed through Sunkist during a representative period of years, all as determined by the Board. In any such determination, members shall be treated on an equal basis in respect of each variety, but rates or weighting factors may differ for the several varieties and as between fresh and products fruit. Class A Members shall have no obligation to contribute to, and shall have no property or other rights in or to, the Sunkist Revolving Fund.

10.2 **Member’s Capital Obligation** – Whenever the capital obligation of a member is determined, as a proportionate share of the total capital requirements for that year, pursuant to Bylaw 10.1, the computation shall be on the basis of a formula to be prescribed by the Board, taking into account the volume or value or both of fruit by varieties marketed for such member with appropriate rates or weighting factors to reflect the varying capital requirements of the several varieties and the differences in capital requirements of fruit for fresh shipment and fruit for products. Such formula may be modified or amended by the Board from time to time, before, during, or within eight and one-half (8 1/2) months after, any fiscal year to which such change is applicable. This Section 10.2 shall not apply to Class A Members.

10.3 **Adjustment of Member Shares** – Whenever the capital share of a member for any fiscal year, computed pursuant to Bylaw 10.2, exceeds the amount of capital credits attributed to him/her at the beginning of such year, as reflected by Sunkist records, the amount of such excess shall be assessed to such member and may be withheld or retained from proceeds of sales, patronage dividends or any other amount otherwise due such member for such year. In the event such share for such year is less than the capital credits attributed to such member at the beginning of such year, the difference may be refunded to such member or to the holder of credits attributed to him/her at such time or times and in such manner as the Board may determine, provided that all members be treated alike in this respect for any one fiscal year. This Section 10.3 shall not apply to Class A Members.

10.4

Contributions by Growers in Voting Units – The following principles shall apply to Growers in a voting unit of Growers whose fruit is packed by a packinghouse other than a Local Association:

- (a) The aggregate capital obligation of each such voting unit of Growers shall be computed on the same basis as if such voting unit of Growers were a Local Association. The proportionate share of such amount to be provided by each Grower in such voting unit shall be based on volume or value or both of fresh fruit and products fruit marketed by each such Grower in the same manner as the proceeds of marketing such fruit are apportioned cooperatively between such Growers.
- (b) For the sole purpose of determining the obligation to contribute to the capital fund described herein, any contribution previously made to the Sunkist Revolving Fund or Capital Fund with respect to production of a Grower during the representative period of years may, with the

consent of the Person entitled to receive repayment of such capital credits, be attributed to such Grower even though such contribution was made with respect to such production by another Person. Thus, in computing the obligation to make contributions for the fiscal year 1967-68 and subsequent years, contributions in prior years by a packinghouse which was formerly a member of Sunkist may be attributed to the Growers who produced the fruit with respect to which such prior contribution was made. Such attribution shall be based on the volume or value or both of the fruit produced by each such Grower in the same manner as the proceeds of marketing such fruit have been apportioned cooperatively between such Growers.

- (c) Each packinghouse which agrees that prior contributions may be attributed to the Growers who produced the fruit with respect to which such prior contribution was made shall furnish Sunkist with detailed information concerning the volume and value of all fruit marketed by each such Grower during the representative period of years so that Sunkist may establish a record of the capital credits attributable to the production of each such Grower.
- (d) Whenever Sunkist capital credits are attributed to a Grower solely for the purpose of computing the obligation of such Grower to contribute to the Sunkist capital fund but such capital credits represent indebtedness to another Person, the following special rules shall apply: (i) the attribution of such credits to the Grower shall cease if the Grower ceases to be affiliated with the packinghouse that originally made the contribution, and (ii) whenever the capital obligation of such Grower is less than the capital credits attributable to such Grower, the difference to be refunded shall be applied to repay such capital credits in the order in which they were credited on the books of Sunkist, so that the oldest credits are repaid first.
- (e) Each accounting agent for such a voting unit of Growers shall annually furnish Sunkist with the detailed information concerning the volume or value or both of all fruit delivered by each Grower in the voting unit, so that Sunkist may compute the capital obligation of each such Grower in the voting unit, make appropriate assessments and withholds or retains, give appropriate notices and maintain appropriate records of capital credits.

10.5

Nature of Capital Credits – All such capital credits shall constitute indebtedness of Sunkist to the respective Persons to whom credited, but such indebtedness shall be paid solely upon the conditions and at the time and times hereinafter provided. No interest shall be payable on any such credits. Such capital credits shall be subordinated to all other indebtedness of Sunkist, secured or unsecured, as provided in Bylaw 10.10.

10.6

No Segregation of Funds – The monies representing the capital credit or allocated reserve credits may be commingled with and used for corporate purposes as other monies belonging or coming to Sunkist are used. Nothing herein contained shall be deemed to require that any specific monies or funds be segregated, or designated, or marked, or set apart, or held for the capital fund or any allocated reserve fund, nor shall the capital fund or any allocated reserve fund be deemed a trust fund held for the owners of capital credits or allocated reserve credits.

10.7

Losses Chargeable Against Credits – In the event Sunkist sustains or reasonably expects to sustain a substantial loss, from any cause whatever, the Board, may in its sole discretion, charge all or any part of said loss to any one or more of the following accounts:

- (a) Current operating expenses;
- (b) Any unallocated reserves;

- (c) Capital credits and/or other allocated reserve credits for the fiscal year in which such loss was incurred or to which the loss was attributable;
- (d) All capital credits and/or other allocated reserve credits for all years.

In the event said loss is charged to capital credits or other allocated reserve credits, the same shall be charged ratably and proportionally against all credits in the varietal or other class charged. Notice of such charge against capital credits or other allocated reserve credits shall be given within the period specified by law after the close of the fiscal year in which such loss is charged, to the Persons in whose names the credits stand on the books of Sunkist. Anything in these Bylaws to the contrary notwithstanding, there shall be payable in respect to capital credits and other allocated reserve credits only the difference between the amount of the credits originally entered and the portion of such loss charged thereto.

The Board shall have the power to determine when a substantial loss has occurred, or to make a reasonable estimate of an anticipated loss, and its determination shall be conclusive. In making such determination, the Board may consider among other factors, losses from bank suspensions, uncollected accounts, fire, explosion, accident or other calamity, unforeseen marketing conditions, excessive or high manufacturing, operating or overhead costs due to crop failure or below normal production, inadequate depreciation charges, and unusual or unforeseen expenses, including taxes, assessments, fines, penalties and claims arising under any present or future law.

10.8 **Capital Fund Statement** – Within the period specified by law after the close of each fiscal year, Sunkist shall furnish each member of Sunkist obligated to contribute to the Sunkist Revolving Fund during said fiscal year with a statement showing the dollar amount of capital credits standing on the books of Sunkist in the name of such member, being in such form and containing such other information as the Board may prescribe. In the event of a loss chargeable against capital credits pursuant to Bylaw 10.7, the same shall be reflected on the capital fund statement, which shall be furnished to all holders of capital credits affected by such loss, whether or not they were members during said fiscal year.

10.9
10.10 **Assignment or Transfer** – Capital credits may be assigned or transferred at any time by execution of a written assignment thereof, on a form to be provided by Sunkist, and delivery thereof to the secretary of Sunkist; provided, however, that no such transfer shall be complete until entered upon the books of Sunkist.

10.11 **Payment on Dissolution** – In the event of dissolution or liquidation of Sunkist, all unpaid capital credits and other allocated reserve credits shall be deemed due but shall not be paid in any part until all other indebtedness of Sunkist has been paid or adequately provided for. Without limiting the foregoing or any subordination or other rights that Sunkist or creditors of Sunkist may otherwise have with respect to payment of unpaid capital credits and other allocated reserve credits, the rights of members or other holders of any such capital or other allocated reserve credits to receive any payments with respect thereto shall also be subordinated to the rights of Sunkist's creditors under borrowing transactions in the same manner as members' and other Persons' rights to receive payments of any proceeds from the sale of fresh and products fruit are subordinated under Bylaw 10.13. All other provisions of these Bylaws providing for payments with respect to capital credits and other allocated reserve credits are subject to the provisions of this Bylaw 10.10. In the event funds are insufficient to cover all such credits and reserves, payment of capital credits and other allocated reserve credits shall be on a pro rata basis.

Tax Treatment – Every Person who hereafter applies for and is accepted to membership in Sunkist and each member of Sunkist on the effective date of this bylaw who continues as a

member after such date shall, by such act alone, consent that the amount of any distributions with respect to his/her patronage occurring after November 1, 1967, which are made in written notices of allocation or per-unit retain certificates (as defined in 26 U.S.C. 1388) and which are received by him/her from Sunkist will be taken into account by him/her at their stated dollar amounts in a manner provided in 26 U.S.C. 1385(a) in the taxable year in which such written notices of allocation or per-unit retain certificates are received by him/her. This bylaw became effective November 1, 1967. For tax treatment for prior years refer to prior bylaw.

Tax Treatment of Distributions Designated as “Nonqualified” – The consent of each member pursuant to Bylaw 10.11 shall not extend to distributions or allocations which are made in written notices of allocation or per-unit retain certificates which are designated as “nonqualified”.

10.12

10.13

Rights of Certain Creditors – Since the Sunkist capital fund and other sources of equity capital may not provide sufficient capital to conduct the affairs and business of Sunkist, the Board under Bylaw 6.1(b) has the authority to borrow money and incur indebtedness for the purposes of Sunkist. In the case of borrowing transactions requiring repayment by Sunkist within one year or less, the rights of members or other Persons to receive from Sunkist any proceeds from the sale of fresh and products fruit shall be subordinated to the rights of Sunkist’s creditors under any such transaction. In the case of any other borrowing transaction, the rights of members or other Persons to receive from Sunkist any proceeds from the sale of fresh and products fruit shall also be subordinated to the rights of Sunkist’s creditors under such other borrowing transactions if the Board adopts a resolution so providing. Pursuant to any subordination under this Bylaw 10.13, Sunkist may (as an example and not in limitation of any meaning subordination may otherwise have) agree to pay and pay, and agree to adequately provide for and adequately provide for, all principal and interest owing to a creditor prior to paying to members or other Persons any proceeds from the sale of fresh and products fruit in the event of (i) a liquidation, dissolution or other winding up of Sunkist, or (ii) any bankruptcy or insolvency proceedings and any sale, execution, receivership, liquidation, readjustment, reorganization or similar proceeding in connection therewith, or (iii) an acceleration of the debt owed upon a default under a borrowing agreement. All other provisions of these Bylaws providing for payments of any proceeds from the sale of fresh or products fruit are subject to this Bylaw 10.13. To the extent that any subordination pursuant to this Bylaw 10.13 may cause a delay of payments of proceeds for fresh or products fruit by Sunkist, Sunkist shall promptly seek sufficient capital by all available and appropriate means (including, if necessary, an increase in the Sunkist capital fund), in order to resume payments in a normal manner as soon as possible.

10.14

10.15

Nonpatronage Dividends. Sunkist, at the discretion of the Board, may declare and pay a regular corporate nonpatronage dividend out of retained nonpatronage earnings; and such amount shall be in addition to the amounts otherwise payable to patrons that are derived from business done with patrons; provided that Class A Members shall not be entitled to any such dividends.

Class A Members and Nonmember Patrons. Class A Members and nonmember patrons shall have no rights or obligations with respect to the Sunkist Revolving Fund, but shall share the expenses and dividends of their respective patronage pools after equitable allocation of costs as determined in the discretion of the Board as provided in these Bylaws and the respective agreements between Sunkist and each Class A Member and nonmember patron. No Class A Member or nonmember patron shall have any property rights in any assets of Sunkist, except the right to participate in their respective patronage pools on a patronage basis.

ARTICLE XI

GENERAL GOVERNING PROVISIONS

Principal Office – The principal office for the transaction of business of Sunkist is hereby fixed and located at 27770 N. Entertainment Drive, Valencia, California.

Method of Giving Notices – Whenever in these Bylaws notice is required to be given it may be given by one (1) or more of the following methods:

- 11.1 (a) Delivered personally; or
- 11.2 (b) Sent by certified, registered or express mail, postage prepaid, addressed to the residence or place of business of the member or director, as the same shall appear on the books of Sunkist; or
- (c) Sent by facsimile transmission to the residence or place of business of the member or director, with a copy sent contemporaneously by mail; or
- (d) Sent by electronic transmission in accordance with Sections 20 and 21 of the CGCL, as applicable, delivered to each member or director at the address as it is shown upon the records of Sunkist or as may have been given to Sunkist by the member or director for purposes of notice.

11.3 **Effect of Holiday** – If the time designated herein for any meeting should fall upon a day that is a legal holiday under the laws of California or of the United States of America, then any such meeting shall be canceled unless another date is fixed by the Board and notice thereof given in the manner provided for a special meeting.

11.4 **Indemnity** – Each Member shall severally indemnify and save Sunkist harmless against all loss, damage, injury, liability, cost and/or expense of whatsoever nature suffered or to be suffered by Sunkist by reason of any claim or claims asserted or made to or against Sunkist by reason of any act of commission or omission of such member.

11.6 **Fiscal Year** – The fiscal year of Sunkist extends from November 1 to October 31, following.

11.7 **Seal** – The Board shall provide a suitable seal containing the name of Sunkist, the date of its incorporation and other appropriate words, and may alter the same at pleasure.

Amendments – These Bylaws may be amended or repealed or new Bylaws adopted as follows:

- (a) By vote or written assent of members (other than Class A Members) entitled to exercise two-thirds (2/3) of the voting power, except that an amendment or repeal of the following Bylaws shall require the greater percentages of such voting power, as follows:

Bylaw

Percentage
Required

9.4(d)(2)	(Transportation – Facility)	75
9.4(d)(3)	(Transportation – Pooling of Charges)	75
9.4(f)	(Pooling)	75
7.1	(Committees of the Board)	80
9.4(b)	(Quotas and Allocation)	85
9.4(a)	(Reserved Right)	90
11.7	(Amendments)	90
11.11	(Packinghouse License Agreements)	75

or

- (b) By vote of two-thirds (2/3) of the authorized number of directors: except that the Board may not amend Bylaws 3.1, 3.2, 3.3, or 3.4 (relating to voting rights of members), 5.1 or 5.2 (relating to number, qualification and selection of directors) except that the Board may amend Bylaw 5.1 solely for the purpose of establishing the exact authorized number of directors within the limits therein prescribed, such exact authorized number to be computed solely in accordance with the formula contained in Bylaw 5.2; or any of the Bylaws specified in Bylaw 11.7(a) as requiring a percentage of voting power greater than two-thirds (2/3); provided, however, that the power of the Board to adopt, amend or repeal Bylaws may be revoked at any time by vote or written assent of members entitled to exercise a majority of the voting power.

11.8

Nonpatronage Income – Any nonpatronage income realized by Sunkist may be used in whole or in part and from time to time for any one or more of the following purposes:

- (a) Distribution (in cash or by written notice of allocation) to members. The amount allocated to each member (excluding Class A Members) shall be based on patronage, determined on the basis of the volume or value or both of fresh fruit and products fruit marketed through Sunkist during a representative period of years by the members for whom such allocations are made, all as determined by the Board, other than Class A Members as such. Allocations of ordinary income from nonpatronage sources during the preceding Sunkist fiscal year shall be based on patronage during such fiscal year. Allocations of extraordinary income from nonpatronage sources shall be based on patronage, insofar as practicable, during the period to which such income is attributable. The Board may place amounts allocated by written notice in one or more separate reserves to distinguish between the source and nature of such allocations. Such reserves may be adjusted by action of the Board, including charging losses against any such reserve pursuant to Bylaw 10.7. In the event that the Board determines that some monies held in any such reserve are available for payment of allocated reserve credits, oldest unpaid allocations in such reserve shall be paid first. All allocations made in the same fiscal year shall have the same priority. If such available monies are insufficient to redeem all allocations for a given fiscal year, a pro rata redemption may be made of the allocations for such year.
- (b) Any other purpose authorized under the Articles or Bylaws of Sunkist, including retention as permanent equity, subject to any restrictions or limitations contained in said Articles or Bylaws.

- (c) Without limiting any subordination or other rights that Sunkist or creditors of Sunkist may otherwise have with respect to distributions of nonpatronage income, the rights of members or other Persons with respect to such distributions shall also be subordinated to the rights of Sunkist's creditors under borrowing transactions in the same manner as the members' and other Persons' rights to receive payments of any proceeds from the sale of fresh and products fruit are subordinated under Bylaw 10.13. All other provisions of these Bylaws providing for distributions of nonpatronage income or payments with respect thereto are subject to the provisions of this Bylaw 11.8(c).

Disposition of Undistributable Funds

- 11.9 (a) Whenever a member or other Person deriving rights from a member is entitled to receive a payment or allocation from Sunkist, and Sunkist, after making reasonable efforts to do so within three (3) years after the same became payable, is unable to locate the Person entitled to payment, or, after making reasonable efforts to do so, is unable to determine the amount to which such member, or Person deriving rights from a member, is entitled, the Board shall charge-off the same as a liability on its books, transfer such amount to the general unallocated reserve of Sunkist, and the claim of any such Person to any such monies shall thereby be extinguished.
- (b) No charge-off or termination of liability as herein provided shall occur, however, unless at least sixty (60) days prior written notice of the proposed charge-off is mailed by first class or certified mail to the last address shown on the records of Sunkist of the Person entitled to such monies and published in a newspaper of general circulation in the county in which such Person last resided, as shown on the records of Sunkist. No such charge-off shall take place if written notice objecting to such charge-off is received by Sunkist from the Person entitled to such monies prior to the date of the proposed charge-off.

11.10

Indemnification of Directors and Officers

- (a) Each director and officer of Sunkist shall be indemnified by Sunkist to the fullest extent permissible under California law against all costs, expenses and liabilities, including, without limitation, judgments, fines and settlements incurred by him/her in connection with, or resulting from, any threatened, pending or completed action, suit or proceeding, to which such director or officer may be made a party by reason of being or having been a director or officer of Sunkist. The foregoing right of indemnification shall not be exclusive of other rights to which he or she may be entitled as a matter of law.
- (b) If a claim against a director or officer includes a claim against the lawful spouse of that director or officer solely by reason of (i) such spouse's status as the spouse of the director or officer or (ii) such spouse's ownership interest in property which the claimant seeks as recovery for alleged wrongful acts of the director or officer, then all loss which such spouse becomes legally obligated to pay on account of such claim shall be treated as a loss which the director or officer becomes legally obligated to pay, and such spouse of the director or officer shall be indemnified by Sunkist to the fullest extent permissible under California law against all costs, expenses and liabilities, including, without limitation, judgments, fines and settlements incurred by such lawful spouse in connection with, or resulting from, any threatened, pending or completed action, suit or proceeding, to which such lawful spouse may be made a party by reason of being the lawful spouse of the director or officer of Sunkist. The foregoing right of indemnification shall not be exclusive of other rights to which such lawful spouse may be entitled as a matter of law.

- (c) Subject to the then conditions and qualifications set forth in the CGCL, expenses incurred by any such Person in defending any action, suit or proceeding referred to above shall, upon written request by such Person, be advanced by Sunkist prior to the final disposition of such proceeding, upon receipt of a written promise by or on behalf of such Person to repay such amount, unless it is ultimately determined that such Person is entitled to be indemnified as set forth herein. Such written undertaking shall be accompanied by such collateral to secure repayment as the Board, in the exercise of its discretion, determines should be required under the circumstances of the case.

11.11 **Packinghouse License Agreements** Sunkist shall not enter into any packinghouse license agreement with any Local Association or any independent packinghouse engaged (in either case) by Growers or by Class A Members for the packing and handling of their Sunkist fruit, unless and until at least seventy-five percent (75%) of the authorized number of directors has approved such packinghouse license agreement; provided, however, that the foregoing shall not apply to any such Local Association or any such independent packinghouse which is so engaged as of May 14, 2008 according to the books and records of Sunkist. Similarly, whenever under any packinghouse license agreement (regardless of whether such agreement was in existence as of May 14, 2008) Sunkist's prior written consent is required for any transfer of the voting power or of the stock or other equity of an independent packinghouse or a Local Association, such Sunkist consent shall be conditioned upon the approval of such transfer by at least seventy-five percent (75%) of the authorized number of directors.

11.12 **Ordinary Patronage Income and Loss from Ventura Coastal Joint Venture Allocation Unit.**

- (a) For patronage accounting purposes, Sunkist's interest in Ventura Coastal, LLC (and its subsidiaries) ("Ventura Coastal") and activities directly related to that interest shall be treated as a separate allocation unit (the "Ventura Coastal unit").
- (b) As soon as reasonably possible after the close of each fiscal year, the overall net income or loss of the Ventura Coastal unit shall be determined taking into account the gross income received by Sunkist and allocable to such unit and the costs and expenses of Sunkist attributable or allocable to such income. The gross income of the unit shall not include, however, any portion of the proceeds from sale of products fruit marketed by Growers through by Sunkist and sold to Ventura Coastal LLC pursuant to any fruit purchase agreement between Sunkist and Ventura Coastal in force at any time, which proceeds shall be handled in accordance with Bylaw 9.5. The overall net income or loss of the Ventura Coastal unit shall include Sunkist's share of the income or loss of Ventura Coastal, but shall not include any extraordinary gains or losses realized by Ventura Coastal or any extraordinary gain or loss that might be realized by Sunkist upon the disposition of all or part of its interest in Ventura Coastal.
- (c) After determining the overall net income or loss of the Ventura Coastal unit for the fiscal year in question, Sunkist shall then determine the portion thereof that constitutes patronage-sourced income or loss and the portion that constitutes nonpatronage income or loss.
- (d) Any nonpatronage income of the Ventura Coastal unit (whether ordinary or extraordinary) shall be handled in accordance with Bylaw 11.8.
- (e) Any patronage-sourced loss or nonpatronage loss of the Ventura Coastal unit shall be handled in accordance with Bylaw 10.7.

- (f) After first setting aside reasonable reserves for necessary purposes out of patronage-sourced net income of the Ventura Coastal unit for the fiscal year in question as determined by the Board, any remaining patronage-sourced net income shall be allocated on a patronage basis among the Growers (excluding Class A members) based upon the volume of their Sunkist patronage during the fiscal year in which such profits were generated, and volume for these purposes shall be determined based upon Sunkist's capital fund records. Amounts so allocated shall be distributed as a patronage dividend.

ARTICLE XII

DISPUTE RESOLUTION

12.1 **Arbitration and Litigation – Dispute Resolution** Any and all disputes between Sunkist on the one hand, and a member or members on the other hand, shall be arbitrated. All such arbitrations shall be held exclusively in the County of Los Angeles, State of California. Within ten (10) days after a written demand to arbitrate a dispute, the parties shall agree on a single, neutral arbitrator if the dispute involves \$250,000 or less in damages, restitution or other financial relief; and agree on three neutral arbitrators if the dispute involves over \$250,000 in damages, restitution or other financial relief. In the event that the parties cannot agree on such arbitrator or arbitrators in that time period, the parties agree that the American Arbitration Association ("AAA") shall select such arbitrator or arbitrators within thirty (30) days after being asked to do so by one of the parties to the dispute. If the AAA selects the arbitrator or arbitrators, the AAA will also administer the arbitration.

The procedures of any arbitration, regardless of whether or not it is administered by the AAA, shall be governed as far as practicable by the then-current Commercial Arbitration Rules of the AAA. The arbitrator or arbitrators shall only have the power to apply the law of California, excluding its conflict of laws, unless federal law applies in which case the arbitrator or arbitrators shall only have the power to apply federal law.

The arbitrator or arbitrators shall prepare in writing and shall provide to the parties an award including factual findings and the reasons on which his, her or their decision is based. The arbitrator or arbitrators shall not have the power to commit errors of law or legal reasoning. Any arbitration award or decision resulting (in whole or in part) from such error or errors may be vacated or corrected only pursuant to the California Arbitration Act and only in a California state court of competent jurisdiction in the County of Los Angeles, State of California and any appropriate appellate court, to the full extent that such courts can, under applicable law, provide such review. In such circumstances, the courts shall have jurisdiction to review, and shall review all alleged errors of law or legal reasoning based upon a de novo review of the arbitration record and the evidence. Any arbitration award or decision that does not have errors of law or legal reasoning may be confirmed in any appropriate California state court in the County of Los Angeles, and any appropriate appellate court.

Notwithstanding the foregoing, one or more parties may seek interim relief from a court of competent jurisdiction in the County of Los Angeles, State of California, or any appropriate appellate court, as provided in California Code of Civil Procedure Section 1281.8 or the principles in such section.

To the extent that any dispute is in court (as set forth above), Sunkist (on behalf of itself) and each member irrevocably submits and agrees to the exclusive jurisdiction and venue of such courts in the County of Los Angeles, and any appropriate appellate court, and waives any objection thereto, including, without limitation, any objection based upon *forum non conveniens*.

The prevailing party in any arbitration, lawsuit or other proceeding covered by this By-law (collectively, an "Action") is entitled to recover its reasonable attorney fees and all reasonable costs (whether or not such costs are otherwise recoverable under the provisions of the California Code of Civil Procedure or other statutory law of California or any other jurisdiction, and including, without limitation, any compensation owed to an arbitrator or arbitrators and all arbitration forum fees) incurred in connection with the prosecution or defense of such Action and/or enforcement of any judgment, order, ruling or award granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a judgment, order, ruling or award, from the losing party. A prevailing party includes, without limitation, a party which agrees to dismiss an Action on the other party's payment of some or all sums allegedly due or performance of some or all of the covenants allegedly breached, or which obtains substantially the relief sought by it.

12.2 **Time Limitations** – Any and all arbitrations or legal actions brought by Sunkist (or a majority owned subsidiary of Sunkist) against a member or brought by a member against Sunkist and/or a majority owned subsidiary of Sunkist shall not be had or maintained unless such arbitration or legal action is commenced within two (2) years after the alleged claim or alleged cause of action has accrued.

12.3 **Damage Limitation** – Sunkist and a majority owned subsidiary of Sunkist shall not be liable to members for any punitive or exemplary damages. Members shall not be liable to Sunkist and a majority owned subsidiary of Sunkist for any punitive or exemplary damages.

12.4 **No Joinders, Consolidations or Class Actions** - In the event of a dispute between Sunkist on the one hand, and one or more members on the other, each dispute shall be determined upon its own facts and merits, and no procedure in the nature of a class action and no joinder or consolidation of one person's claim with the claim of any other person shall be permitted in an arbitration, judicial or other legal proceeding.